

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

WILLIAM STAPLES,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-08-531-D
)	
UNITED STATES OF AMERICA, ¹ <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This matter is before the Court for review of the Report and Recommendation issued June 16, 2009, by United States Magistrate Judge Doyle W. Argo [Doc. No. 37]. Judge Argo recommends a dismissal for lack of jurisdiction of Plaintiff's remaining claim against the United States under the Federal Tort Claims Act (FTCA).² *See* 28 U.S.C. § 2675(a).

A review of the case file reflects no objection to the Report nor request for additional time to object. On June 30, 2009, a copy of the Report mailed to Plaintiff at his address of record was returned as undeliverable, and on July 7, 2009, the United States filed a notice regarding Plaintiff's transfer to a different correctional facility on March 24, 2009. In its notice, the United States also provides proof that Plaintiff received a copy of its motion to dismiss. *See* United States' Notice [Doc. No. 39].

Upon consideration, the Court finds that these circumstances do not provide a basis for an exception to the court of appeals' "firm waiver rule" because Plaintiff was responsible for giving

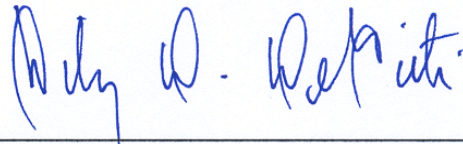
¹ The caption reflects a substitution of parties effected by the Amended Complaint. *See* Order 3/9/09 [Doc. No. 31] at 1, n.1; Report & Recom. 2/9/09 [Doc. No. 25] at 1, n.1.

² The only other defendant named in the Amended Complaint, Paul A. Kastner, was previously dismissed. *See* Order 3/9/09 [Doc. No. 31] at 2.

notice of a change of address. *See Theede v. United States Dep't of Labor*, 172 F.3d 1262, 1267-68 (10th Cir. 1999) (*pro se* plaintiff who failed to provide any change of address or address correction waived right to review by failing to make a timely objection); *see also* W.D. Okla. R. LCvR5.4(a) (requiring written notice of a change of address). Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in the June 16 Report. Further, Plaintiff has failed to respond to the United States' motion for dismissal, despite receiving notice of it months ago. Therefore, for the reasons stated by Judge Argo, the Court finds that dismissal of Plaintiff's FTCA action against the United States for lack of jurisdiction is appropriate.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 37] is ADOPTED in its entirety. The United States' Motion to Dismiss [Doc. No. 35] is GRANTED, and Plaintiff's action against the United States is DISMISSED without prejudice to refile. Because no other claims remain pending, a separate judgment of dismissal will be entered.

IT IS SO ORDERED this 17th day of July, 2009.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE